

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

HOUSTON FOOD NOT BOMBS,)	Civil Action No.: 4:19cv1661
SHERE DORE,)	(Jury trial)
PHILLIP PICONE, and)	
ALIENE ADAMS,)	
)	
<i>Plaintiffs,</i>)	
)	
V.)	
)	
THE CITY OF HOUSTON, TEXAS,)	
)	
<i>Defendant.</i>)	

PLAINTIFFS' FIRST AMENDED ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF THE COURT:

NOW COMES Plaintiffs HOUSTON FOOD NOT BOMBS (hereinafter, sometimes, "Food Not Bombs"); SHERE DORE (hereinafter, sometimes "Sheré"); PHILLIP PICONE (hereinafter, sometimes "Phillip"); and ALIENE ADAMS (hereinafter, sometimes "Aliene") and amends their complaint "as a matter of course" pursuant to FRCP 15 complaining of the Defendant CITY OF HOUSTON, TEXAS (hereinafter, sometimes "City of Houston") and will show the following:

NUTSHELL

1. Incredibly as it may seem to an outsider the City of Houston, Texas has made spontaneous sharing of food with six or more of the "those in need" outdoors illegal subjecting a person to a fine of up to \$2000.00 and jailing.¹
2. Houston City Ordinance Chapter 20, Section 20-251, *et seq.* (hereinafter, sometimes

¹ *Atwater v. Lago Vista*, 532 U.S. 318 (2001) (a person's Fourth Amendment right to be free from an unreasonable seizure is not violated when the subject is arrested for a misdemeanor that is punishable only by a fine).

the “Anti-Sharing Food Law”) is facially, and as applied, Unconstitutional under the U.S. Constitution as it violates the Right to Freedom of Speech, Freedom of Association, Freedom of Assembly, Due Process of Law, Equal Protection of The Laws, and Freedom of Religion and it is vague and overbroad. *Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale*, No. 16-16808 (11th Cir. 2018).

JURISDICTION AND VENUE

3. This is a civil action seeking damages, declaratory judgment and injunctive relief and damages to vindicate and safeguard Plaintiffs’ and other person’s similarly situated rights guaranteed by the Constitution and laws of the United States and Texas. Accordingly, this Court has subject matter jurisdiction of this action under 28 U.S.C. §§ 1331; 1343(a)(3), (4) and supplemental jurisdiction, under 28 U.S.C. § 1337(a), to hear Plaintiffs’ state law claims, if any.

4. Venue is proper in this Court, under 28 U.S.C. § 1331(b), because the incident at issue took place in Harris County, Texas, within the United States Southern District of Texas.

PARTIES

5. Plaintiff Houston Food Not Bombs is an unincorporated association principally active in Houston, Texas.

6. Plaintiff Shere Dore is an individual residing in Harris County, Texas.

7. Plaintiff Phillip Picone is an individual residing in Harris County, Texas.

8. Plaintiff Aliene Adams is an individual residing in Harris County, Texas.

9. Defendant City of Houston in a municipality within the U.S. Southern District of Texas and can be served with process by serving the City Secretary, 900 Bagby, Houston, Texas 77012.

FACTS

10. July, 2012 the City of Houston, Texas enacted Section 20-251 through 257 of the Houston Code of Ordinances (**Exhibit 1**) the following ordinance (“Anti-Sharing Food Law”):

Houston, TX Code of Ordinances

Sec. 20-252. - Use of property without consent prohibited.

It shall be unlawful for any organization or individual to sponsor or conduct a food service event on public or private property without the advance written consent of the public or private property owner or other individual with lawful control of the property.

Furthermore,

Houston, TX Code of Ordinances

Sec. 20-251. – Definitions

Charitable food services means providing food without charge, payment or other compensation to benefit those in need at an outdoor location not owned, leased or controlled by the individual or organization providing the food.

Food service event means each instance in which charitable food services are provided to more than five individuals.

11. “Those in need” as referenced in the “Charitable food services” definitions has not been defined and neither has “charitable.”

12. Houston Food Not Bombs is an unincorporated association affiliated with the grassroots international Food Not Bombs movement that engages in peaceful political direct action to communicate its message that our society can end hunger and poverty if we redirect our collective resources from the military and war and that food is a human right, not a privilege, which society has a responsibility to provide to all. Food Not Bombs shares food with anyone, without restriction, to communicate this message and organize for positive social change. The group does not serve food as a charity, but instead as an expression of and to further their political message. Food Not Bombs

serves vegan or vegetarian food to reflect its political dedication to nonviolence against all, including animals.

13. Houston Food Not Bombs' website sets forth:

Agreements

We, participants in Food Not Bombs Houston (FNBH), agree;

1. to use sharing of free food, exchange of information, and dialogue as a means of promoting social justice, cultural exchange, horizontal organizing, and mutual aid

2. not to use or tolerate sexual, racial, or any other form of harassment, authoritarianism, assault, or threat thereof in conjunction with FNBH

3. to bring only vegan (containing no animal products) or ovo-lacto freegan (may contain dairy or egg, but obtained for free) food that is safe for consumption, and to indicate any non-vegan ingredients

4. to respect each other's privacy and views, to try to contribute constructively to the group, and to refrain from disparaging the contributions of others

5. not to sell food or otherwise profit from any kind of donations given to FNBH

6. not to represent our personal viewpoints as viewpoints of FNBH, or make decisions on behalf of FNBH

7. to establish a group decision before: inviting the media to FNBH sharings, giving interviews as a FNBH volunteer, giving the media names or any other information about those coming to share or eat (everyone can choose whether or not to speak for themselves)

8. to act in a friendly and calm manner when police visit FNB, and to explain to officers that we are just trying to help people

9. to encourage each other to call for a circle at any meal sharing to make proposals, work on group decisions, or raise concerns, including those about individuals not respecting these agreements

Vision

If we were to spend the amount of money we spend on weaponry on feeding the homeless. We could eliminate the homeless problem the world over. Poverty is a form of violence. We often assume that poverty is inevitable for some people, but with the surplus of food in this country alone, no one should have to go hungry.

Poverty is, instead, a way of maintaining the status quo in a society. If everyone had equal access to the necessities of life, as well as equal opportunity to education, work, etc., some very powerful people would suddenly and themselves with a little bit less due to the fact that they no longer control such a large piece of the economic pie. As an organization, Food Not Bombs simply tries to redistribute a tiny portion of the wealth (in this case, food) that so many seem to not want to give up. The name "Food Not Bombs" means just that. With so many people at home and abroad going hungry, and so much of our wealth controlled by so few, and going towards such terrible things as weaponry, it's insane to assume that we can't redistribute some of that wealth to those who need it

International Food Not Bombs Mission Statement

Food Not Bombs recovers and shares free vegan or vegetarian food with the public without restriction in over 1,000 cities around the world to protest war, poverty and the destruction of the environment. Each group is independent and invites everyone to participate in making decisions for their local chapter using the consensus process. Food Not Bombs is dedicated to taking nonviolent direct action to change society so no one is forced to stand in line to eat at a soup kitchen expressing a commitment to the fact that food is a right and not a privilege. With over a billion people going hungry each day how can we spend another dollar on war?

12. Shere Dore has volunteered with Houston Food Not Bombs for several years. She dedicates time to sharing food, which includes eating food, as a form of political expression to demonstrate that society can end hunger and poverty if we redirect our resources towards providing food for all instead of weapons of war. She shares meals with other individuals who attend to communicate solidarity with all who experience hunger and to associate with other members of the community in their shared political beliefs that food is a human right. Shere opposes the Anti-Sharing Food Law and fears arrest for her food sharing activities throughout Houston.

13. Phillip Picone has volunteered with Houston Food Not Bombs for several years. He dedicates time to sharing food, which includes eating food, as a form of political expression to demonstrate that society can end hunger and poverty if we redirect our resources towards providing food for all instead of weapons of war. He shares meals with other individuals who attend to communicate solidarity with all who experience hunger and to associate with other members of the

community in their shared political beliefs that food is a human right. Phillip opposes the Anti-Sharing Food Law and fears arrest for his food sharing activities throughout Houston.

15. Plaintiff Aliene Adams has volunteered with Houston Food Not Bombs for several years. She dedicates time to sharing food, which includes eating food, as a form of political expression to demonstrate that society can end hunger and poverty if we redirect our resources towards providing food for all instead of weapons of war. She shares meals with other individuals who attend to communicate solidarity with all who experience hunger and to associate with other members of the community in their shared political beliefs that food is a human right. Ailiene opposes the Anti-Sharing Food Law and fears arrest for her food sharing activities.

16. Furthermore, Plaintiff Aliene Adams is a Christian. Alieine has a sincere religious belief that sharing, receiving and giving food to others as the spirit moves her is part of what her religion encourages her to do and she has done so on many occasions for many years by giving, receiving and sharing food for free with more than five people at a time on Houston public property without regard to day of week, time of day or location and without first obtaining written permission from the landowner or the City of Houston. Aliene would often talk with the people they were giving and sharing food with and wish to do so now and in the immediate future. Aliene fears she wil be arrested for violating the Houston Anti-sharing Food law.

17. The Holy Bible contains at least the following passages regarding sharing and giving food:

Matthew 25:35

For I was hungry and you gave me food, I was thirsty and you gave me drink, I was a stranger and you welcomed me,

Isaiah 58:10

If you pour yourself out for the hungry and satisfy the desire of the afflicted, then shall your light rise in the darkness and your gloom be as the noonday.

Proverbs 28:27

Whoever gives to the poor will not want, but he who hides his eyes will get many a curse.

Luke 3:11

And he answered them, "Whoever has two tunics is to share with him who has none, and whoever has food is to do likewise."

Matthew 14:15-21

Now when it was evening, the disciples came to him and said, "This is a desolate place, and the day is now over; send the crowds away to go into the villages and buy food for themselves." But Jesus said, "They need not go away; you give them something to eat." They said to him, "We have only five loaves here and two fish." And he said, "Bring them here to me." Then he ordered the crowds to sit down on the grass, and taking the five loaves and the two fish, he looked up to heaven and said a blessing. Then he broke the loaves and gave them to the disciples, and the disciples gave them to the crowds. ...

James 2:14-18

What good is it, my brothers, if someone says he has faith but does not have works? Can that faith save him? If a brother or sister is poorly clothed and lacking in daily food, and one of you says to them, "Go in peace, be warmed and filled," without giving them the things needed for the body, what good is that? So also faith by itself, if it does not have works, is dead. But someone will say, "You have faith and I have works." Show me your faith apart from your works, and I will show you my faith by my works.

John 6:35

Jesus said to them, "I am the bread of life; whoever comes to me shall not hunger, and whoever believes in me shall never thirst.

Proverbs 14:31

Whoever oppresses a poor man insults his Maker, but he who is generous to the needy honors him.

Proverbs 31:20

She opens her hand to the poor and reaches out her hands to the needy. 1 John 3:17-18

1 John 3:17-18

But if anyone has the world's goods and sees his brother in need, yet closes his heart against him, how does God's love abide in him? Little children, let us not love in word or talk but in deed and in truth.

Romans 12:20

To the contrary, "if your enemy is hungry, feed him; if he is thirsty, give him something to drink; for by so doing you will heap burning coals on his head."

Deuteronomy 8:1-20

"The whole commandment that I command you today you shall be careful to do, that you may live

and multiply, and go in and possess the land that the Lord swore to give to your fathers. And you shall remember the whole way that the Lord your God has led you these forty years in the wilderness, that he might humble you, testing you to know what was in your heart, whether you would keep his commandments or not. And he humbled you and let you hunger and fed you with manna, which you did not know, nor did your fathers know, that he might make you know that man does not live by bread alone, but man lives by every word that comes from the mouth of the Lord. Your clothing did not wear out on you and your foot did not swell these forty years. Know then in your heart that, as a man disciplines his son, the Lord your God disciplines you. ...

John 6:55-59

For my flesh is true food, and my blood is true drink. Whoever feeds on my flesh and drinks my blood abides in me, and I in him. As the living Father sent me, and I live because of the Father, so whoever feeds on me, he also will live because of me. This is the bread that came down from heaven, not like the bread the fathers ate and died. Whoever feeds on this bread will live forever.” Jesus said these things in the synagogue, as he taught at Capernaum.

2 Kings 4:43

But his servant said, “How can I set this before a hundred men?” So he repeated, “Give them to the men, that they may eat, for thus says the Lord, ‘They shall eat and have some left.’”

Luke 12:20

But God said to him, ‘Fool! This night your soul is required of you, and the things you have prepared, whose will they be?’

Luke 9:13

But he said to them, “You give them something to eat.” They said, “We have no more than five loaves and two fish—unless we are to go and buy food for all these people.”

Isaiah 61:1-2

The Spirit of the Lord God is upon me, because the Lord has anointed me to bring good news to the poor; he has sent me to bind up the brokenhearted, to proclaim liberty to the captives, and the opening of the prison to those who are bound; to proclaim the year of the Lord's favor, and the day of vengeance of our God; to comfort all who mourn;

Nehemiah 5:1-19

Now there arose a great outcry of the people and of their wives against their Jewish brothers. For there were those who said, “With our sons and our daughters, we are many. So let us get grain, that we may eat and keep alive.” There were also those who said, “We are mortgaging our fields, our vineyards, and our houses to get grain because of the famine.” And there were those who said, “We have borrowed money for the king's tax on our fields and our vineyards. Now our flesh is as the flesh of our brothers, our children are as their children. Yet we are forcing our sons and our daughters to be slaves, and some of our daughters have already been enslaved, but it is not in our power to help it, for other men have our fields and our vineyards.” ...

Matthew 25:34-46

Then the King will say to those on his right, 'Come, you who are blessed by my Father, inherit the kingdom prepared for you from the foundation of the world. For I was hungry and you gave me food, I was thirsty and you gave me drink, I was a stranger and you welcomed me, I was naked and you clothed me, I was sick and you visited me, I was in prison and you came to me.' Then the righteous will answer him, saying, 'Lord, when did we see you hungry and feed you, or thirsty and give you drink? And when did we see you a stranger and welcome you, or naked and clothe you? ...

18. In 2012 various citizens of Houston, Texas collected petition signatures, totaling over 34,000 (Thirty-four thousand) signatures, of people in an attempt to get rid of the Anti-Sharing Food Law by placing it on the November 6, 2012 election ballot. The petition and signatures were presented to the City in July, 2012 and were enough to place the issue on the ballot. The City did not put the issue on the November 6, 2012 ballot. Thereafter, the City of Houston claimed over ten thousand signatures were invalid which they were not. A separate petition garnered over 75,000 signatures against the Anti-Sharing Food Law.

19. The following individuals and groups in the Houston area declared they were against the Anti-Sharing Food Law (the individuals in these groups number in the thousands):

A Simple Thread

Canvas Church

Houston Casa Juan Diego

Casa de la Fuente

Center for Student Missions Houston

The Central American Resource Center

Central Canaan Christian Church

Christ the Servant Lutheran Church

Clear Lake Tea Party

Dominican Sisters of Houston

Ecclesia Church

Emmaus Ministries Houston

The Executive Council

Feed My Sheep Ministries

Free Radicals

Gethsemane Missionary Baptist Church

Harris County Democratic Socialists

Harris County Green Party

Harris County Libertarian Party

The Harris County Republican Party (Local Government Committee)

House of Amos

Houston Area Pastor Council

Houston Food Not Bombs

Houston Interfaith Worker Justice Center

Houston Property Rights Association

Houston Tea Party Society

Houston United

Houston Young Republicans

Immaculate Concepcion Catholic Church

IMPACT: I am the Movement

ISKCON Houston (Hare Krishna Temple)

Japhet Civic Association

Joe Williams Ministries

KHA-Atheists

Last Chance Recovery Center

Last Organic Outpost

Love Out Loud Homeless Ministry

Maryknoll Fathers and Brothers

Mosque #45, Nation of Islam

Muslims Against Hunger, Disease and Injustice

Light the Way Home, Inc.

National Lawyers Guild, Houston Chapter

NHPO Leadership Institute

Noah's Kitchen Occupy Houston

Occupy Wall Street,

Houston Pat Greer's Kitchen

Pax Christi

Ryon Civic Association

The Progressive Action Alliance

Shape Community Center

Sinfull Bakery

Stand Up for Kids

St. Charles Borromeo Catholic Church Outreach Program

Texas Public Policy Foundation

Taxpayers For Equal Appraisal

UH Fair Labor Action Committee

UH Students for a Democratic Society

UH Students Against Sexual Harassment and Assault

Sonic Visions

Voice of the Homeless Awareness Project

West Houston Assistance Ministries

Young Americans for Liberty, HCC

Deloyd Parker

Minister Robert Muhammad

Reverend Fana,

Women's Resource Center

Duane Bradley, KPFT General manager

Houston City Council Member Helena Brown

Ray Hill

Rev. Robert A. Crutchfield, Editor and Publisher, Faith That Inspires Action

Dave Atwood, Houston Peace and Justice Center

Rhonda Omberg,

Harris County GOP, Precinct 839

Precinct Chair and several local Democratic party groups

20. At several Houston City Council public meetings in 2012 several hundred individuals spoke out against the Anti-Sharing Food Law. Many hundreds if not thousands of individuals served food in the past, and wish to do so in the future, which would be a violation of the Anti-Food Sharing Law.

FREE SPEECH, FREEDOM OF ASSOCIATION and ASSEMBLY- 1ST AMENDMENT

21. Plaintiffs incorporate paragraphs 1-20 as if fully set forth herein.

22. The Anti-Sharing Food Law infringes on Plaintiffs' freedom of association and assembly with members of their group and the public to engage in political organizing for positive social change in support of their group's purpose and mission. The law unlawfully restrains Plaintiffs' ability to participate in the public debate about the human right to food by prohibiting them from exercising their First Amendment rights to expression and association. *Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale*, No. 16-16808 (11th Cir. 2018)

23. Infringements on the right to expressive association must be justified by regulations adopted to serve compelling interests, unrelated to expression of ideas, that cannot be achieved through means significantly less restrictive on associational freedoms. The City's ordinance fails to meet this standard because the City is prohibiting Plaintiffs from associating with members of the public to share food as symbolic expression of their political message that food is a human right and to communicate their message of solidarity and social unity with anyone who is hungry which is a human condition shared by all. The City's interests for restricting this expressive activity are not compelling, and can be achieved through means significantly less restrictive on associational freedoms. The City's restrictions essentially make it unlawful for Houston Food Not Bombs to associate for expressive purposes of communicating its message that food is a human right by sharing food in the City.

24. The Anti-Sharing Food Law, on its face, acts as an unlawful prior restraint on Plaintiffs' First Amendment rights because the City requires them to first obtain written consent from the property owner, thereby barring them from engaging in lawful expressive activity in the City of Houston without first applying for and receiving permission from City officials to use the public

forum in advance of actual expression. The City's ordinance lacks any process to obtain this permission or any standards to guide decisions about whether the City will grant or deny permission and under what conditions.

25. There is no City ordinance that requires groups to obtain a permit to assemble for purposes of having a protest on City sidewalks or in City parks but Plaintiffs are prohibited from engaging in protected expression that involves sharing food to communicate and in furtherance of their political message without written permission from the City.

26. The City failed to provide narrow, objective and definite standards to guide City officials in determining whether to issue "written consent" under the Anti-Sharing Food Law. The ordinance lacks procedural safeguards to ensure against unlawful infringement on protected speech. Because the ordinance fails to set forth definite standards of review, the ordinance grants unfettered discretion to a City official to arbitrarily grant or deny a request.

27. The City is applying the Anti-Sharing Food Law prohibits Plaintiffs from engaging in expressive conduct in a quintessential public forum in violation of Plaintiffs' constitutionally protected First Amendment rights.

28. Plaintiffs are engaged in expressive conduct protected by the First Amendment at through symbolic expression of food sharing. Plaintiffs intend to convey a particularized message that food is a human right and that our society can end hunger and poverty if we redirect our collective resources from the military and war to meeting basic social needs and providing food to all. Food sharing is inherently expressive conduct and the political message conveyed by Food Not Bombs is apparent to a reasonable observer.

29. The Anti-Sharing Food Law fail constitutional scrutiny as an unlawful and unreasonable time, place or manner restriction on expressive activity and conduct in a traditional public forum.

30. Whatever interest the City has in the Anti-Sharing Food Law is not narrowly tailored to meet this interest because there is no evidence that the provision of food to members of the public at free or low cost either causes or perpetuates homelessness or that elimination of free food sources will end homelessness.

31. The City's Anti-Sharing Food Law fails to allow for spontaneous expression and speech and on its face and as applied to Plaintiffs has a chilling effect on constitutionally protected expression.

32. As a direct and proximate result of the deficiencies in the Anti-Sharing Food Law Plaintiffs are deprived of their right to free speech in quintessential public fora and on its face and as applied to Plaintiffs violates their rights under the First Amendment of the U.S. Constitution.

33. Plaintiffs have suffered and continue to suffer irreparable harm for which there is no adequate remedy at law and they have been directly damaged as a result of the City's conduct.

DUE PROCESS and EQUAL PROTECTION – 14TH AMENDMENT

34. Plaintiffs incorporate paragraphs 1-20 as if fully set forth herein.

35. The Anti-Sharing Food Ordinance is unconstitutionally vague on its face and as applied to Plaintiffs' food sharing activities as the ordinance fails to provide adequate notice of prohibited conduct and authorize and encourages arbitrary enforcement. *Kolender v. Larson*, 461 U.S. 352 (1983), *Hoffman Estates v. The Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 494 (1982). The Fourteenth and Fifth Amendment guarantees everyone the right to due process before property is taken or liberty denied. *U.S. Const. Amend. V and XIV*. Fifth Amendment violations are actionable

under 42 U.S.C. Section 1983.

36. The ordinance fails to define key terms and phrases.

37. The Anti-Food Sharing Ordinance applies only to “those in need” however “those in need is not defined. Neither is “charitable” defined.

38. Therefore, when people show up at a Houston Food Not Bombs or other outdoor food sharing event Plaintiffs cannot tell whether or not there are six or more of “those in need” present to constitute a violation subjecting them to fine and imprisonment nor whether their sharing of food is “charitable.”

39. Furthermore, a law that applies to “those in need” but not to, presumably, “those not in need” violates the equal protection clause of the 14th Amendment.

40. The ordinance on its face and as-applied to Plaintiffs is unconstitutionally vague in violation of the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution.

41. As a direct and proximate consequence of the deficiencies in the ordinance and Plaintiffs are deprived of due process while seeking to exercise their right to free speech in quintessential public fora.

FREEDOM OF RELIGION-1ST AMENDMENT

42. Plaintiff Aliene Adams right to Freedom of Religion is being infringed upon. Her deeply held belief as a Christian is to share food including more than five at time outdoors in Houston, Texas without first obtaining permission. As such the Anti-Sharing Food Law infringes upon her right.

ATTORNEY'S FEES

43. The Plaintiffs are entitled to recover attorneys' fees and costs and under 42

U.S.C. Sections 1983 and 1988, from Defendant City of Houston.

JURY TRIAL

44. The Plaintiffs demand trial by jury on all issues triable to a jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs requests that the Court:

Enter judgment for Plaintiffs and the class against the City of Houston;

Declare the Anti-Sharing Food Ordinance Unconstitutional and Unconstitutional as applied;

Award damages to Plaintiffs for the violations of their rights under the First, Fourth, Fifth and Fourteenth Amendments and state law claims, if any;

Award Pre- and post-judgement interest;

Award attorney's fees and expenses;

Declare the Anti-Sharing Food Ordinance or portions thereof Unconstitutional and provide injunctive relief to stop its enforcement; and

Grant such other and further relief as appears reasonable and just, to which, Plaintiffs show themselves entitled.

Respectfully Submitted,
Kallinen Law PLLC

/s/ Randall L. Kallinen
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CERTIFICATE OF SERVICE

I hereby certify that I have served all counsel of record and pro se parties a copy of the foregoing by the ECF System of this court on August 7, 2019.

/s/ Randall L. Kallinen
Randall L. Kallinen